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JAMES H. MCKENNEY,

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Brf. of McLoughlin & Gilmore for Pl'ff in Error

Miller for D.E. (mo.)

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Feb. 20, 1899.

No. 705.

GEORGE L'HOTE ET AL., PLAINTIFFS IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Defendant in Error on Motion to Dismiss or Affirm.

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Brief for Defendant in Error on Motion to Dismiss or Affirm.

Plaintiff in error, L'Hote, who was plaintiff in the court below, enjoined the execution of an ordinance of the city of New Orleans, fixing the limits within which houses of prostitution could be lawfully conducted, and also designating the limits within which the same could be maintained. His interest in bringing the suit was to protect from impairment in value certain real estate belonging to him, situated in the territory within which the ordinance permitted such establishments to be conducted. His complaint was that the maintenance of the latter in the neighborhood of his property would constitute a public nuisance, causing him pecuniary injury, and against which he was entitled to

relief by injunction, prohibiting the enforcement of the ordinance.

The grounds assigned for the nullity of the latter were that it was unconstitutional, unreasonable, and oppressive. The unconstutionality was averred to consist of its violation of the Constitution of the United States and that of the State of Louisiana, in that it deprived plaintiff of his property without due process of law, and amounted to a taking or damaging of his property for public purposes without just compensation being first made.

The judgment of the supreme court of Louisiana, sustaining the legality and constitutionality of the ordinance, proceeded upon the ground that the same was within the ordinary and usual power of police vested in all municipal corporations, and particularly the power expressly conferred upon the city of New Orleans by its charter. This latter act No. 45 of the General Assembly of the State of Louisiana of its session of 1896, particularly paragraph 2 of section 14 thereof and paragraph 11 of section 15, gives the city council express power to suppress all nuisances and to regulate houses of public prostitution and assignation, and to close the said houses from certain limits.

Where, on a writ of error to the supreme court of a State, the action upon which the jurisdiction of this court depends is so manifestly right that the case ought not to be held for further argument, while a motion to dismiss will be denied, one to affirm will be granted.

Arrowsmith *vs.* Harmoning, 118 U. S., 194.
Church *vs.* Kelsey, 121 U. S., 283.

It may be well doubted whether the application for the writ of error in this case, if made to this court or to the Chief Justice or an associate justice thereof, would have been granted, the practice being to deny the writ, when it appears on the face of the record that the decision of the

Federal question which is complained of was so plainly right as not to require further argument.

In re Kemmler, 136 U. S., 436.

Spies *vs.* Illinois, 123 U. S., 131–164.

It is not unreasonable to assume that in the granting of the order for the writ of error herein the presiding justice of the supreme court of Louisiana was moved by a commendable reluctance to retard plaintiffs in error in submitting to this court the complaint that they had been deprived of a Federal right by the judgment of the State supreme court.

That the adoption of ordinances regulating bawdy-houses is within the undoubted police power of a municipality is well settled by the weight of authority can, in no respect, be considered as open to discussion.

The Federal Constitution, broad and comprehensive as it is, was not designed in any respect to interfere with the power of a State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier *vs.* Connolly, 113 U. S., 31.

Ordinances to regulate and confine the prosecution of business, even lawful and not immoral in character, within certain definite territorial limits have been held by this court as being purely police regulations, within the competency of a municipality possessed of ordinary powers.

Barbies *vs.* Connoly, 113 U. S., 27.

Soon Hing *vs.* Crowley, 113 U. S., 797.

In a matter so closely connected with the public morals as the regulation of houses of prostitution, it would hardly seem necessary to adduce reasons or cite authority to maintain that their confinement to certain prescribed limits, in the judgment of the municipal authorities best calculated to

mitigate their evil effects, is obviously included within the ordinary powers of a municipal corporation.

In Louisiana the power to suppress such establishments has been held free from constitutional objection.

City *vs.* Roos, 35 La. An. Rep., 1011.

There is no room for doubt that this court, after an examination of the present record, will reach no other conclusion than that there is no semblance of error in the judgment from which the writ of error is taken; if this be true, the taking of the writ can be explained only on the theory that it was taken for delay. The present motion is designed to relieve the city from the effect of an injunction against the enforcement of an ordinance, which for nearly two years has prevented the execution of a police ordinance, of the legality and constitutionality of which there can be no question.

Respectfully submitted.

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